CHAPTER-I
INTRODUCTION

- "Reject Wealth/money and also desires which are contrary to Dharma. Reject also such rules of Dharma, obedience to which leads to unhappiness to some or bring about public resentment." - [IV-176], Manusmruti

- "We have just enough religion to make us hate, but not enough to make us love one another."

  - Jonathan Swift

- "Religion is not in doctrines, in dogma's, nor in intellectual argumentation; it is being and becoming, it is realisation."

  - Swami Vivekanand

(1.1) Introduction

India is a country with a variety of cultures, a multitude of languages, several of ethnic groups, a great many religions, sects, sub-sects, communities etc. All of them have their own unique identity. All these characteristics make India incredible in many ways.

Religio-cultural pluralism is India's past, present and future; indeed her heart and soul. No religion is foreign to India; nor is India a foreign land for any religion. India's great religious figures - Rama and Krishna, Buddha and Mahavira - were all very well-known to the human world when the two global religions of today, Christianity and Islam, appeared on the world scene one after the other. Neither of them denied India's spirituality - both treated India as their own land and India too hailed them with open arms. Two thousand and
fifteen hundreds years, respectively, of continued existence in India have made Christianity and Islam part and parcel of the Indian religio-cultural traditions.  

Throughout its history, India has observed the principle of equality of all religions and of their followers. Even when hereditary rulers belonged to a dynasty professing a particular religion - Hindu, Buddhist, Muslim or Sikh - they did not impose their religion on others and allowed the followers of all religions to freely profess and practice their own respective faiths. There might have been some aberrations few and far between, but the generally this tradition always prevailed. This age-old tradition was inherited by the country from its past at the time of the advent of independence and of enforcement of a Constitution over two years later. India is the home state of the largest number of Hindus, and of the second largest number of Muslims, in the entire world. Being home also to millions of Buddhists and Christians, this country indeed qualifies to be called the only abode of all the four world religions together. Among the citizens of India there are sizable numbers of followers also of several other religions including the Jain, Sikh, Jew and Bahai faiths. In the pluralistic and multi-religious society of India, religious tolerance and religious values have always had, and continue to have, a strong, influence.

In *St.Xavier's College Society v. State of Gujarat*, the Apex Court opined that, India is the second most populous country of the world. The people inhabiting this vast land profess different religions and speak different languages. Despite the diversity of religion and language, there runs through the fabric of the nation the golden thread of a basic innate unity. It is mosaic of different religions, languages and cultures. Each of them has made mark on the Indian polity and India today represents a synthesis of them all.

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2 Ibid.
3 Ibid at pp. 8 - 9.
4 AIR 1974 SC 1389
In *TMA Pai Foundation case*\(^5\) the Apex Court vehemently opined that, a citizen of India stands in a similar position. The Constitution recognizes the differences among the people of India, but it gives equal importance to each of them, their differences notwithstanding, for only then can there be a unified secular nation. Recognizing the need for the preservation and retention of different pieces that go into the making of a whole nation, the Constitution, while maintaining, inter alia, the basic principle of equality, contains adequate provisions that ensure the preservation of these different pieces.

In *A. S. Narayana Deekshituluv. State of Andhra Pradesh*\(^6\) the Apex Court of India observed that, in the mindset of unity in diversity among the Indians having different religions and cultural hues, for their assimilation as integrated citizens, all endowed with human rights, dignity of person, equality of status, liberty of faith and worship with fraternity, the religious spirituality fosters them as a strong unifying social entity.

During the British regime urgent steps were taken to bring uniformity in law which could govern the whole citizenry of British India, excluding the princely States. They were sovereign as far as their administration was concerned. However, the Britishers were conscious of their own limitations in doing this exercise. And, therefore, the personal law applicable to each community was not interfered with. It continued to operate. What was tried by the British rulers was to achieve uniformity in other secular laws, such as Criminal Procedure Code, Civil Procedure Code, Evidence Act, Law relating to contract, property etc. After the War of Independence, the British rulers took a decision not to interfere with the religious sentiments of the natives, and further assured that their religious beliefs and sentiments would be scrupulously honoured.\(^7\) Due to these reasons, the Personal law system of India, which was

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\(^5\) (2002)8 SCC 481
\(^6\) AIR 1996 SC 1765.
\(^7\) M. S. Ratnaparkhi, *Uniform Civil Code : An Ignored Constitutional Imperative* 1, (Atlantic Publishers and Distributors, New Delhi, 1997.)
then and now, claimed to be based on different religious beliefs, remained as it was. Though there are some instances, where Britishers abolished many ill-practices going on in the name of religion, and their positive effects were seen in the society, but thereafter they became more cautious regarding their political issues.

There is a basic contradiction in the term 'personal law'. A person is an individual. As such, any right of an individual should mean that it is a personal right. But personal law connotes a set of legal rights pertaining to family affairs that an individual is entitled to not just by virtue of being an individual but by virtue of being a member of a religious or ethnic group or community. In fact, personal law is a term which means that set of laws, which regulates matrimonial, inheritance, adoption and other civil issues of an individual or a group of individuals who are the members of a particular community. And, such rights are exercised individually.

To fulfill the theme of the Preamble, necessary provisions are incorporated in the form of Fundamental rights, Constitutional rights, Directive Principles of State policy etc., in the Constitution of India. The legal system of India, works to meet the fundamental principles of the Constitution. India, being a secular country, provides, equal treatment of law to all the religions and religion people, in respect of their rights of all the spheres, except the rights provided under different personal laws.

In India, in reference of personal laws, citizens are treated unequally, because they belong to a particular religion or they belong to a different religion. Civil issues like marriage, divorce, succession, inheritance, adoption, will, etc. are determined as per the provisions of the personal law of the religion to which particular person or citizen belongs. Remedy differs, if the asking person professes different religion. Such kind of situation is not only

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illogical but also contrary to the concept of "Human Rights", which are promulgated by different international instruments and are also incorporated under various provisions of different Statutes, and specifically under the Constitution of India. It is a question of deep concern "why such inequality occurs, in a country which is a "Secular and Democratic Republic?" When it is admitted that India is a secular country, why to give weightage to different personal laws which are falsely claimed to be based on religion? Another question arises is that, does existing personal law system of India matches with the theme of the Preamble of the Constitution of India?

In the name of religion, several ill-and illogical but legal practices are going on in the society. It has not only caused inequalities and indifferences among the people of different religions, but also has caused inter-religion inequalities and indifferences, because the system is such, that in each particular religion, different sects and sub-sects, too have different rules for them. They all are carried out in the name of religions, customs and usages. Inspite of passing several laws in one area, not only at Central level but at inter-State level too, there are several differences.

Due to different personal laws, grave gender injustice has also occurred in different areas of personal laws. Property rights, divorce grounds, adoption issues, maintenance etc. are the major areas where such injustice can be seen easily. Surprisingly no any major action is taken in this regard to abolish such gender biased legal system. The main reason behind such scenario is that, people are not governed exactly by law, but they are dominated by certain selfish and self centered people, who do not want their people to go out of their reach. Vote bank politics has given rise to this.

It is an admitted fact that when the making of "Constitution of India" was going on, "The Declaration on Human Rights, 1948", was kept in view by the Constitution framers and they gave due weightage to the Human Rights in
the form of Fundamental and Constitutional rights, and also in form of Directive Policy of State. But if its observed by overall performance, it is bitter but truth that State has gone failed in determining several of these objectives.

The main argument from the people of different religions is that, their personal laws are of divine origin, hence, they cannot be changed. If its truth, then at least for the people who are professing one religion, i.e. Hinduism, Muslims, Christians or Parsis etc., the law should be one but it is not so. A Hindu from east has different set of personal law, then a Hindu from South. A Christian of Travancore has a different set of property law than of Tirrunvely. Muslims of Sunni Sect has different set of inheritance rules than of Shia. If "God" is one, or "Allah" is one, how can his children differ from each other.

If different religions are studied comparatively, it can be easily observed that they give the one and similar message of peace and brotherhood to people. All the religions form a common code of ethics for their followers. The verses from different religions, give message of accepting moral changes as per the changing time. Existing differences, in present personal laws of India, can not be welcomed. Without understanding the true theme of religion, people are quarreling for their personal Statutes. The main reason behind this, is that common people are taught, twisted versions or words of religious verses to get personal benefits. The religion has remained as a main tool in the hands of anti-social elements, with which they can play in any way.

Most of the developed countries have modified and uniformed their personal law system. Many of them are Muslim countries. Laws of any country should be changed as per the changing culture and demand of society. If it does not happen so, it causes grave injustice to the different group of people of the society. Developing Law system is one of the basic tools for a positive social transformation. In its absence, society has to suffer problems. In India, even after 65 years of enforcement of the Constitution, weaker sections like, woman,
children and tribals are bound to suffer grave injustice. From no point of view, it can be justified.

In present age, when the whole world is going through drastic changes, and the social values and stages are changing very fast, a rethinking regarding Indian Personal Law System has become unavoidable and necessity of the time. No system of any kind, can claim to be suitable for ever. From the time of the making of the Constitution of India and even prior to that, society needed it badly and Rulers of this country wanted to do so, but due to one or other reason they avoided or were tempted to avoid it. Such situation led this country with an illogical and unjustifiable personal law system. In no circumstances, it should be bared for more time.

While introducing the Hindu Code bill, in 1954, Pt. Jawaharlal Nehru, the then Prime- Minister said; "I do not think that at the present moment the time is ripe in India for me to try to push it through." More than six decades are passed after that, and such arguments cannot sustain in present time. The people have long awaited for a healthy personal law system in India. Now, and since many years, people have started taking benefit of other religion laws which suits their desire. If not in direct way, they do it by way of conversion. Several such incidents are noted so far.

A rethinking of family law independent of religious constraints will also enable the rules to be in harmony with the needs of people in contemporary society. While it is a truism that law and society are mutually influenced, there are many obstacles in the path of legal development that make the current family laws inappropriate for a rapidly urbanizing and developing economy of India. The inertia in matters of law reform is partly a result of lack of systematic institutional mechanisms. While there is a Law Reform Commission which advises the government of the day about the aspects of law that need change, it does not play a decisive or influential role. Similarly, various other
Commissions make suggestions to the government but these are mere suggestions and are not binding on the government. It is not surprising then that the governments respond to political pressures in an ad-hoc manner rather than execute a well-integrated reform plan in the field of family law.⁹

Historical development of different personal laws, reveals that, certain changes have definitely occurred in different areas, but such piecemeals are not sufficient to constitute a healthy legal system and society. Personal laws relating to Hindus have gone through drastic changes during pre and post Constitutional era. Though in piecemeals, but by introducing different legislations, drastic reform is brought in Hindu Law. But others have remained nearly untouched for the sake of, and in the name of minorities. Voice of few leaders can not be accepted as the voice of the whole community. If it is heard in total, there are more voices which seek social transformation with changing time.

After independence, "Secularism" is the most misinterpreted and twisted concept in this country. People has used and misused this word rather concept, as per their needs and desires. The politics of "Secularism" has, in fact, changed and badly moulded, its real meaning and true sense. Whatever mal-practices and ill-provisions of personal laws still have their existence, are just due to the misinterpretation of this term of the Constitution.

In Ms. Aruna Roy v. Union of India¹⁰, the Supreme Court bench, comprising of Justice M. B. Shah, Justice D. M. Dharmadhikari and Justice H. K. Sema, while defining word "Secularism", observed, "The word "Secularism" used in the Preamble of the Constitution containing Article 51-A prescribing fundamental duties of the citizens. It has to be understood on the basis of more than 50 years experience of the working of the constitution. The

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⁹ Archana Parashar and Amita Dhanda, Redefining Family Law in India XV, (Routledge, New Delhi, 2008)
¹⁰ AIR 2002 SC 3176
complete neutrality towards religion and pathy for all kinds of religious teaching in institutions of the state have not helped in removing mutual misunderstanding and intolerance inter se between sections of people of different religions, faiths and beliefs. 'Secularism', therefore, is susceptible to a positive meaning that is developing understanding and respect towards different religions. The essence of secularism is non-discrimination of people by the state on the basis of religious differences. 'Secularism' can be practiced by adopting a complete neutral approach towards religions or by a positive approach by making one section of religions people to understand and respect religion and faith of another section of people. Based on such mutual understanding and respect for each other's religions faith, mutual distrust and intolerance can gradually be eliminated."

To remove all the infirmities relating to personal laws, enforcement of an uniform civil code (UCC) is the only solution. Without it "social and equal justice" are meaningless words only. The time is much ripen and it is much awaited for UCC. The interest of justice and the theme of the Preamble of the Constitution can only be secured by enacting a UCC for all the citizens of India, irrespective of their religion, caste, creed, sex and community. Hurdles coming in its way should be removed by "Rule of Law". Terms, Common Civil Code and Uniform Civil Code is generally taken in same meaning. Though it is different, but it does not make any difference in this reference.

In several of verdicts, the Apex Court of this country and different High Courts of various States have knocked the Constitutional conscience of the Government, regarding inequality, existing in personal laws and to eradicate such unjustifiable system and also in many landmark judgments, have called for the requirement of a UCC for the citizens of India, but nothing concrete has been done in this direction by any of the governments.
Article (Art.) 44 of the Constitution of India reads as under;

"The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India."

After long hours debate, Constituent Assembly, incorporated this Art. in Part IV of the Constitution. Behind this, their object was that, this country do need such kind of comprehensive code rather having plural personal laws for different religions people. And at a point of time, this Art. would have a practical implementation.

Though laid down in part IV of the Constitution of India, Art. – 44 has a vital role to play in Part III, that is Fundamental Rights, for providing meaningful justice to the people of India.

In multicultural states, minorities are always in fear of the loss of identity. Many minorities are naturally concerned that the application of a uniform civil code would take on a Hindu appearance, or at least would not give them an adequate role to express their culture. There are several models of states' attitudes toward multiculturalism. Notable are the assimilationist model and the neutral model. India's Constitution seems to point toward a neutral model.11 The laws governing different religions bring about many problems. One of these occurs when two separate and different sets of rules apply to a situation, such as when two people of different religions wish to be married. Another is that while some religious laws have gone through reforms over time, others have not been changed at all. This leads to there being rules which allow substantial deprivation of human rights, and in particular of women's rights, in a state that wishes to be democratic. This includes polygamy or the unilateral divorce in Islam. Another problem is that significantly different rules apply to different people, creating a situation in which not all are equal before

the law. The Constitution of India attempted to rectify these ills, by creating a secular state, with a uniform civil code, while at the same time permitting freedom of religion. With the central importance religion has in the life of all the citizens of India, the purpose of the Constitution was not to reflect the current state of India, but to better shape the society, and bring about social reform. How exactly this should be accomplished, however, was not elaborated in the Constitution. One of the tools placed in the hands of the state, however, was Art. 44.

Fundamental rights enshrined in Part III of the Constitution are the rights conferred on individuals, citizens, groups etc. Directive Principles are, on the other hand, a mandate given to the State. Because it is after all a State, which, as an instrumentality, has the capacity to achieve these objects. The individual bears a duty towards a State. But the mandate in Part IV creates an obligation against the State. Necessarily, therefore, the mandate is against the State and not against the individual. The State as an instrumentality, under the Constitution, is under positive obligation to make genuine efforts to achieve these goals. It is true that the State, without the cooperation from the individual citizens, would not be able to achieve these ends. What is important is that the initiative has to be taken by the State. It is thereafter that the State would justifiably call for the cooperation of the citizens. The citizens, either individually or as a body, are not the law making body. The existence of State is attributable to the Constitution. The ideals enshrined in Part IV of the Constitution are the national ideals and not the ideals of any political party. Whichever party assumes power, it has necessarily to accept and abide by this Constitutional mandate, irrespective of the party ideology. Its incapacity or incompetence arising out of its ideological complexion has no significance.

\footnote{Supra I Jat p.179} \footnote{Ibid at p.180}
and, therefore, it has to accept this mandate and to proceed to achieve the goals.\textsuperscript{14}

A Constitutional mandate cannot be sacrificed at the alter of political expendiency. Every citizen of India who believes in equality, must, therefore, make a determined effort to build up pressure on all political parties to arrive at a Consensus on a uniform civil code. It ceases to be a partisan political concern. It is a national need.\textsuperscript{15} Study of the existing statutes relating to personal laws, proves them ambiguous, illogical, unjustifiable, below the standards of equal social justice and gender bias.

Looking to the ambiguity in the personal law system, it is necessary to enact a uniformed system of family law for all the citizens of this caste. It is possible only when Art. 44 comes into play. To provide a solution thereof, the Researcher has chosen the following subject for research;

A SOCIO-LEGAL STUDY ON NEED FOR UNIFORM CIVIL CODE IN INDIA

(1.2) \textbf{Concept of Uniform Civil Code (UCC)}

The term "Uniform Civil Code" consists of three terms. They are "Uniform", "Civil" and "Code". All these three terms have very vide meaning in different senses.

"Uniform" refers to the similar form of a thing for all. Generally "Common" and "Uniform" are used as synonym of each other but when their de-facto difference is observed, they prove to be different on many aspects. But in reference of present subject, "Uniform" means one and the same in all

\textsuperscript{14}Supra 7 at p. 21.
\textsuperscript{15}Dinanath Raina, Uniform Civil Code And Gender Justice 90 (Reliance Publishing House, New Delhi, 1996)
circumstances, whereas “Common” refers to same in similar conditions. However, when these two words are taken into consideration in context to Art. 44 of the Constitution, they are generally used as synonym of each other.

The term “Civil” has a very elastic expression and it can be used in several senses.

The word "Civil" is derived from the Latin word "Civil" meaning a citizen. The word "Civil" when used as an adjective to "law", has been defined in the shorter oxford dictionary as pertaining to the private rights and remedies of a citizen as distinguished from criminal political, etc.\textsuperscript{16}

The word "civil" according to dictionary, means "relating to the citizens as an individual; civil rights". In Black's Law Dictionary, it is defined as relating to private rights and remedies sought for by civil actions as contrasted with criminal proceedings\textsuperscript{17}. Using the word 'nature' along with it has stretched its width further\textsuperscript{18}.

“Civil law” is used in the sense of personal issues such as family related laws. Moreover, it also includes components such as contracts, compensation and such other laws which do not provide penal provisions.

The word 'code' is derived from the Latin word 'Codex' which means, a book\textsuperscript{19}.

"Code" means a collection of system of laws. The collection of laws and constitutions made by order of the Emperor Justinian is distinguished by the application of 'The Code' by way of eminence\textsuperscript{20}.

\textsuperscript{16} Judicial Officer's Law Lexicon, 965, 2008/09
\textsuperscript{17}Ibid.
\textsuperscript{18}Ibid.
The history of law codes in Europe reveals that, the term 'code' is not used only for various ancient bodies of legal rules but it is also applied to the bodies of laws which were or are known as Barbarian or Germanic law and also to the collection of maritime customs and usages widely accepted throughout Europe.\textsuperscript{21}

In Europe, from 18\textsuperscript{th} to 20\textsuperscript{th} centuries, word 'code' came to be applied to a more or less comprehensive systematic statement in written form of major bodies of law.\textsuperscript{22}

In present era, term 'code' is referred in the sense of a comprehensive work of legislation which regulates a large portion of law and arranged systematically and based on uniform principles.\textsuperscript{23}

As per the definition incorporated under section (S,) 2(1) of Code of Civil Procedure, 1908; "Code" includes rules.

Thus, the term 'civil code' means a law which is related to civil matter and precisely "civil code" refers to a branch of law which is total codification of civil legislation.

When the 'Uniform' adjective is used with 'Civil Code', it refers to a code which is uniformly applicable to all the citizens. Thus, "Uniform Civil Code" refers to a code which is a collection of legal rules which are applied to all the citizens uniformly.

\textsuperscript{20} Supra 16 at p.1001.
\textsuperscript{21} The Oxford Companion to Law 1980, 236.
\textsuperscript{22} See, Ibid p.236.
\textsuperscript{23} See, Supra 19, Vol.6, 1960, 194.
(1.3) Significance of the study

India is a signatory party in several international covenants and treaties. Not only this but also, as per the different theories of the Jurisprudence and principles of natural justice, all should be regarded and treated equally before legal system. Whatever standards and principles are laid down for justice should be equal in all the contexts. Logically and ideally, India has to follow the international standards of justice and equality.

Personal law system is such an area of legal system that affects directly to the socio-eco-political life of the people. For the rights, except those which are governed by personal laws, India has similar law system for its all citizens and when the rights conferred by personal laws are observed, it proves that different personal laws have caused several difficulties and injustice to the life of the citizens of this country. They are treated unequally in reference of personal laws, that is quite contrary to the principles of fundamental structure of the Constitution of India.

The unequal and unjustifiable system of personal law has totally miscarriage the concept of Fundamental rights enshrined under Art.14 of the Constitution of India. At least now, its high time to take action to eradicate present personal law system of this country and to implement an equal and justice based system for all the citizens of this country.

Present research is made with a view to find out an amicable solution of existing personal law system of India. The study and the solution given by the Researcher would be beneficial in many aspects. The main significances of this research work are as under;

1. This research work is an attempt to bring uniformity in personal laws of India which at present give unequal and illogical treatment to the citizens of India.
2. This research is an attempt to lead the personal law system of India, to the International Standards.

3. The solution and suggestions of this study, would eradicate gender-injustice from the existing personal laws.

4. If the model draft code of UCC, given by the Researcher, is accepted by the legislature, all the people and citizens of India would be getting equal treatment of personal laws.

5. Through this research work, misconception and misinterpretation regarding religious personal laws would be eradicated.

6. The amicable solution going to be provided by the Researcher, would minimize the chances of misuse of the loopholes of the provisions of different personal laws.

7. The research intends to provide a systematic equality based and logical legal system applicable to all the citizens of India, irrespective of religion, caste, creed, community, sex etc.

8. Present research is carried out with a view to provide true meaning to Art. 44 of the Constitution of India- a Constitutional mandate.

9. Due to the clarifications and facts given by the Research, the mindset of the people, looking with doubt towards UCC, would be changed.

10. Present study would bring uniformity, in the laws relating to marriage, divorce, adoption, maintenance, inheritance, succession, will, gift etc.

11. The model draft going to be provided at the end of the research, is intended to make, personal law system of India, easily accessible for all the citizens of India.

(1.4) Review of literature

Dhagamwar Vasudha (1989)²⁴, mainly focuses on pre and post Constitutional history of Family Laws, Public and academicians view towards UCC, the role of different stake holders of law and the reasons for which India

²⁴Vasudha Dhagamwar, *Towards the Uniform Civil Code* (Indian Law Institute, New Delhi, 1989).
needs Uniform Civil Code. It also provides the details regarding the letters of the author and its responses from the concerned persons in reference of UCC. To prove the view of Constitution framers, brief notes of Constitutional debates on UCC is given. Extracts from the fourth Annual report of Minorities Commission is also given. The adoption and its related issues are deeply discussed. There are several laws which are of secular nature but then too, change of mindset is required to bring the complete change in personal law system of India. Then only, UCC can be a reality in this country.

**Indian Bar Review (1991)**\(^{25}\), is dedicated to the proceedings held at the National Conference at New Delhi, by the efforts of Bar Council of India, in 1986. In this issue, the view of different stakeholders towards the UCC is noted. The Scholars of different fields of law, participated in this conference and argued on the subjects allotted to them in the area of different family laws of India. After each debate a tentative legal provision is proposed which can be taken in view while drafting the UCC for India. Mainly issues like marriage, succession, divorce, adoption, maintenance are discussed and an effort is made towards UCC.

**Raina Dinanath (1996)**\(^{26}\), discusses the different facts of Gender injustice due to non-availability of UCC for all the citizens of India, irrespective of their religion, caste, creed and community. The book mainly focuses on the following issues:

- The importance of UCC in egalitarian society,
- How and why UCC is a Constitutional Binding for India?
- The role of UCC in national unity

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UCC is not necessary for national unity only, but it is also necessary to make Indian personal law system gender just and up-to the standards of international instruments. UCC is the wish of the founding parents of the Constitution of India.

**Ratnaparkhi (1997)**²⁷, mainly discusses the historical background of Uniform Civil Code which is a Constitutional mandate. Law and Religion have a close relation regarding maintaining peace and equality in the society. Several countries have adopted the common code system to upgrade the legal system of their countries. Several misconceptions occur in India, regarding applicability of Muslim law. The difference in philosophy of Hindu and Muslim law and religion system, is apparent but not real. There is an urgent need to rise above stagnation to upgrade the Indian personal law system and to make it gender just and equally justifiable for all. Many reasons are responsible for non-enforcement of UCC. It is the Ministerial responsibility to form and enact UCC for all the citizens of India.

**M. P. Raju (2003)**²⁸, deals with the issues of debate on draft Art. 35 in Constituent Assembly and how judiciary has dealt with the issue of Art. 44. The author has discussed the agenda for legal pluralism and has critically analysed the issue of protection of specific minority rights and their fundamental rights provided by the Constitution of India in reference of UCC. The author has strongly opined against the implementation of UCC. He has discussed all such issues due to which implementation of UCC is neither logical and nor justifiable.

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Nandini Chavan and Qutub Jehan Kidwai (2006), mainly focuses on:
- The relationship between feudalism and patriarchy,
- Dharmashastra and Hindu Law,
- Legal Reforms in post-Independent period
- The relation between Hindutva Ideology and UCC
- The role and reason of women's movement in respect of UCC
- The reasons and basis of evolution of Islamic Law
- The practice of Muslim Personal Law in the colonial times
- Reformation of Muslim Law in different Muslim countries.
- Territorial diversities and Personal Law in India

This book has tried to analyses different facts and aspects of different family laws of India. The "necessity to reform personal laws for securing gender empowerment, in true sense" is the core idea of this book.

Partha (2007), is mainly concerned with the issues and concepts as the title of the book reflects. The evolution of the Indian discourse, tribal laws and the south Asian Mosaic are the base of this book. It discusses the different aspects of Personal laws and the different religious laws. The codification of Hindu Law and its pitfalls, the politics of the Muslim women's Bill, tribal culture and its identity, the issue of women's rights are discussed with different aspects. The changes and development in different south Asian countries are vividly discussed.

Noronha (2008), contains the issues like codification, juridical relation, ordering of civil law, codification of civil law in Islamic nations, Portuguese and French law in India, ideal of a UCC for India. This book covers

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29Nandini Chavan and Qutub Jehan Kidwai, Personal Law Reforms and Gender Empowerment: A debate on Uniform Civil Code (Hope India Publications, Gurgaon, 2006).
31F. E. Noronha, Understanding the common civil code: An Introduction (All India reporter Pvt. Ltd., Nagpur, 2008).
the process and fact regarding codification of Bavarian Code (1756), Prussian Code (1794), Austrian Code (1811), French Civil Code (1804) etc. It provides information regarding those countries, which have uniformed and codified their civil codes. The encounter between civil and common law is widely discussed. The Portuguese civil procedure code of 1939 is briefly highlighted. Its areas and importance is also narrated. The comparative study of ancient and modern law of different countries, is one of the unique characteristics of this book.

Noronha (2011)\textsuperscript{32} tries to give a Model Code for Goa. It is well known that in Goa, Daman and Diu, there runs a different set of personal laws. Though it is said that there is a UCC but here too, different set of rules are given for different religions people. This book tries to provide solution to uniform the civil code for Goa. This book is a kind of Model draft which the author wishes to be implemented for Goa, Daman and Diu. The proposed code given in this book, mainly covers following issues of personal law;

- General Principles for civil code
- Sources, Applicability, operation and interpretation of law,
- Conflict of Laws,
- Juridical Personality
- Domicile,
- Absence,
- Minority,
- Parental Authority,
- Guardianship of legitimate and illegitimate children,
- acquisition of rights,
- contracts and obligations,
- marriage,
- succession,
- different kind of rights regarding property,

\textsuperscript{32}F. E. Noronha, \textit{outline Goa civil code} (F. E. Noronha, Panjim, 2011).
This book is an effort to uniform and modernize the present civil code going on in Goa, Daman and Diu. While making the draft code, some provisions from current civil code are taken and several new amendments are proposed by the author.

**Ajai (2012)**\(^{33}\), contains the conceptual Analysis and historical background of the UCC, the relationship between personal law and the Constitution of India and Right to freedom of religion in context of UCC. The book discusses the relationship of UCC with Directive Principles of State Policy, fundamental rights and fundamental duties. Enforcing UCC for all the citizens can help the society in several manners like upgrading unity and integrity of the nation, promoting equal and gender just legal system, achieving secularism in its true sense and bringing clarity and simplicity in personal law system of India. The UCC neither intends to curtail the freedom of religion nor the cultural rights of minorities. Lack of information, non built-up of public opinion and unavailability of draft bill, are the main reasons for the objections coming in the way of UCC. By enacting several secular laws, governments have tried to build favourable atmosphere in the society but political will power in toto, lacks. Judiciary of this country has shown very positive response towards enforcement of UCC but courts can't give direction for implementation of a Constitutional mandate proclaimed under Directive Principles of State Policy.

**Shimon Shetreet and Hiram E. Chodos (2015)**\(^{34}\), is divided in two parts. First part is "UCC in comparative perspective" and second part is "Mediating the UCC". This book contains several issues, reasons and suggestions of and for UCC. It provides the brief comparative analysis of Law, religion and culture. The study of different countries regarding their culture,

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religion and the legal system of those countries are also discussed. Different conflicts of ideals of authority, law, reform and political are vividly discussed. The book suggests that the best way to implement the UCC is to organise the mediation with the people. It gives some suggestions by which it can be made easy to enforce UCC. The process of preparing and implementing a UCC should be the function of the legislature. Parallel application of civil and religious laws, gradual application of the UCC and inter-community and individual mediation are the main four guidelines suggested for the implementation of UCC.

(1.5) Hypothesis of the study

After studying and observing various aspects, the Researcher formulates following Hypothesis for the present study;

1. Indian Personal Law system is based on religion.
2. Existing Personal Law System of India is unhealthy and the citizens of this country, neither appreciate it, and, nor are satisfied with it.
3. All the personal laws are gender-bias and they have caused grave injustice to women.
4. UCC would eradicate ill-practices existing in different personal laws due to different usages and customs.

(1.6) Objectives of the study

With the experiences of sixty-five years, its very clear that, personal laws have caused many ambiguities in the society. Each case which is related with Personal law, has its own law. The Apex Court of the country is continuously trying to fill-up the gapes, but such efforts have been proved to be little piecemeals only. No legal system can survive healthily without providing equal justice to all its citizens. The personal law system of India, is criticised on
many instances at international level. That is quite shameful. Just knowing or finding out reasons is not enough but proper cure of the problem is required. To reach beyond the reasons and to suggest a proper cure, this research work is carried out.

The basic object of this research is to find out a solution for the infirmities of the existing personal laws. Ambiguous provisions of personal laws have led the Researcher to find out a way in the interest of societal interest at large. Hence, the Researcher has conducted this research work with certain, definite objectives. They are;

1. To evaluate the existing personal laws.
2. To find out the areas of personal laws which require uniformity.
3. To analyse the development of personal laws in pre and post Constitution era.
4. To analyse the judicial approach towards the personal laws and UCC.
5. To find out the reasons due to which, it is hard to enforce a UCC.
6. To study the fundamental rights and Constitutional provisions with special reference to personal laws.
7. To evaluate the possible socio-legal-political developments by implementation of UCC.
8. To evaluate the role of legislature and government in this area.
10. To analyse the problems occurring due to unavailability of UCC.
11. To suggest appropriate solutions by framing a model draft of UCC.
(1.7) Scope of the study

Art. 1 of the Universal Declaration of Human Rights, declares, "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and showed act towards one another in a spirit of brotherhood", and Art. 2(1) of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 1981 declares "No one shall be subject to discrimination by any State, institution, group of persons, or persons on grounds of religion or other beliefs." India is a party in nearly all the International Conventions and Declarations and has abided itself to adopt the principles promulgated in such Declarations but when it comes to the "de-facto" enforcement of such objects in practical socio-eco-political and legal areas, the political will power lacks.

In providing equal treatment of law to all, in reference of personal laws, India badly needs a well planned policy in which all the people and citizens of India can feel oneness, in toto. Having different personal laws to each religion people, is in no way justifiable. Justice could be seen and felt by the people. The present scenario of personal laws are not totally accepted by the all. Most part of the population is compromising. Even after having the different set of personal laws, people are not satisfied. Many instances have come before the various courts of the country, where people have tried to take the benefit of the other personal law than their personal law by conversion to that religion. This clearly exposes that, there are definite loopholes in existing personal law systems.

Present research, evaluates the personal law system of India with International standards of justice to an individual. Different Declarations at international level, and their susceptibility in Indian perspective are also analysed by the Researcher.
The Researcher has not only analysed the existing personal law system but she has also given logical, practical and acceptable solution to cure infirmities from the personal law system. Landmark judgments of Apex Court of India are analysed and its approach and trend towards framing and enacting of UCC is also analysed. Some judgments of different High Courts are also cited and discussed wherever found necessary. The Researcher has tried to evaluate the problems occurring in the society due to non-availability of the UCC. Analysis is also made regarding existing gender injustice in different personal laws. The developments occurred in pre and post Constitutional period, in personal laws is also analysed and provisions of the Constitution are also analysed with special reference to the fundamental right of freedom of religion and conscience. Through all these efforts, the Researcher has tried to give solution of the problems occurring due to ambiguous personal laws and their provisions. The Researcher has tried to give a model draft of UCC. With some addition and minimization it is formed from the best provisions of the existing personal laws.

Present research work exclusively deals with the broad areas of the personal laws such as marriage, divorce, maintenance, adoption, inheritance, succession, property rights, gifts, wills, administration of deceased property, and charitable and religious endowments.

Issues such as, “Dower”, “Wakf”, “Ligitimacy and Parentage” except adoption, “Pre-emption”, are of Muslim law and issues such as, “Joint-Family”, “Sons Obligation to Pay Father’s Debt”, “Damdupt” of Hindu law are not exclusively made part of the present research. However, in this regard few suggestions are certainly included in chapter VII of this research work.

The various Schedules which are mentioned in the proposed model draft, are not separately attached with the model code, because they can be directly taken for reference from the concerned legislation. All the provisions
of different personal laws are not analysed in this research work because that may divert the object of the research.

(1.8) Limitations of the study

The personal law area of Indian Legal System, is very wide because not only at national level but also at state and area vise, there are very huge differences. Not for different religions and different communities but for inter-religion and inter-community also there are different personal laws. All the States have enacted several personal laws, because this subject comes under Concurrent List of the Constitution of India. Hence, as per so called need and convenience, there exist different Statutes, Regulations, Rules, Sub-Rules and State amendments on the same issue or area. Hence, the area of personal law is not only wide but also vivid.

The present research work is conducted on a very wide area of existing personal law system of India. The Researcher has tried to cover most of the issues and factors which come under personal laws. But Personal Law System of India is not confined in family laws only but some provisions are enshrined under other Statutes also. Looking to its wideness, and to justify the subject of research, some limitations are necessary to keep in view. They are as under;

(1) Present research work exclusively deals with the broad areas of the personal laws such as marriage, divorce, maintenance, adoption, inheritance, succession, property rights, gifts, wills, administration of deceased property, and charitable and religious endowments only.

(2) Though Supreme Court of India and various High Courts of different states have pronounced various landmark judgments in reference of different personal laws, but only those which are directly related with the present title of the study, are referred and cited wherever found necessary.
(3) Present research do not include any other minority or religious rights than of those, which are mentioned in personal laws only and which are of nature that can be covered under UCC.

(4) Present research do not deal with the areas which are incorporated in various other Statutes, such as, purely religious practices and issues which are not directly connected with the present research topic.

(1.9) Research Methodology for the study

Present research works is purely doctrinal in nature. Different books, articles, journals, authors' and eminent jurists' views are referred for study. International instruments, provisions of Constitution of India, various Personal Laws of different religions are studied and analysed by the Researcher.

The Researcher has studied and analysed the scenario of different countries, where family Laws are uniformed. Its experiences and effects on the society of such countries are also studied through various national and international journals. Books available on the subject and related issues are also referred and cited wherever found necessary. Different available research work carried out in this area, are also studied and necessary citations are taken in the present research work.

Related judgments of the Apex Court and different High Courts of various States are discussed at appropriate places. Moreover, one separate chapter is dedicated to show the judicial view on UCC.

The Researcher has taken care to study the subject from all the corners and tried to justify the title. Researcher has studied various personal laws and out of them, the best provisions are selected to constitute a model draft of UCC, applicable to all Indians, irrespective of their caste, creed, religion, community,
sex etc. Necessary suggestions to constitute a UCC are also included in present research work.

(1.10) Summary of Chapters

The present research work is divided into seven (VII) chapters. Their contents are as under;

**Chapter-I:** Introduces the subject. It consists significance, hypothesis, objectives, scope, limitations and research methodology of the present research work. This chapter also consists review of literatures of this area and gives idea regarding the summary of chapters and provides the basic concept of the present research work.

**Chapter-II:** Personal Law System of India, mainly covers historical background of the personal law system of India and development occurred in this area, in pre and post Constitution era.

**Chapter-III:** The Constitution and International Instrument Analysis, various Arts. of the Constitution of India to clear the concept that how these Arts. expressly and impliedly favours the implementation of UCC. Comparative aspect of the principles between international instruments and personal law system of India is also discussed in this chapter. Relevant paras and parts of different international instruments are also noted in this chapter to clear their role and ideals, ought to exist in personal law system of this country and failing of which personal law system of India proves to be below the standards of justice.
Chapter-IV:- Myth Regarding Personal Laws, clears such issues which are in fact myths only. Misconception regarding Quranic Verses for Civil rights such as talaq, maintenance, burqua system, castes, justice and human rights are widely discussed in this chapter. Moreover, the changed scenario of Muslim personal law in different countries, specifically in Muslim countries, outdated provisions in existing personal laws, common observation regarding them and misconception regarding family laws of Goa, Daman and Diu, are vividly analysed in this chapter.

Chapter-V:- Judicial Approach Towards UCC, discusses some important verdicts of the Apex Court and High Courts of various States, on Art. 44 of the Constitution of India. There is a plethora of series of judgments on different areas of personal laws but only such judgments which are of prime importance regarding the present subject, are analysed in this chapter. This chapter tries to prove the approach and view of the Judiciary in the area of implementing common and uniform set of personal law to all the citizens of India, irrespective of their religion, caste, creed and sex etc.

Chapter-VI:- UCC – A Critique, analyses different aspects of UCC issues such as hardships due to non-availability of UCC, objections, impediments, and misconceptions regarding UCC, reasons for the misconception and the core object of the UCC. Some miscellaneous issues like National Law Commission Reports on personal laws, Protection of Women from Domestic Violence Act, 2005 and Dr. Tahir Mahmood’s views regarding Muslim law, are also covered under this chapter.
Chapter-VII:-Conclusion and suggestions, consists conclusion of the study and a model draft of UCC. Moreover, issues such as, suggestions regarding modes and ways of implementation of UCC, testing of Hypothesis and further scope of the study in this area, are also discussed in this chapter.